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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,778	01/23/2002	Donna D. Holland	71710/56835	8739

24536 7590 06/24/2004

GENZYME CORPORATION
LEGAL DEPARTMENT
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FRAMINGHAM, MA 01701-9322

EXAMINER

O CONNOR, CARY E

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,778

Applicant(s)

HOLLAND ET AL

Examiner

Cary E. O'Connor

Art Unit

3732

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-42 and 48 is/are allowed.
- 6) ☒ Claim(s) 43,44 and 47 is/are rejected.
- 7) ☒ Claim(s) 45 and 46 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43, 44, 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Evans et al (6,322,499) in view of Hipps (6,228,025). Evans shows an illuminated retractor comprising a handle member 20 having a first handle member end portion 22 and a second handle member end portion 24, and a first elongate section 30 having proximal and distal end portions 34, 32 and a first inner surface 38 extending from the proximal end portion to near the distal end portion wherein the second handle member end portion is connected to the first elongate section by a twist connector and forms an acute angle therebetween (col. 7, lines 57-61). The second handle member end portion is pivotally connected to the first elongate member (col. 8, lines 59-60). The retractor also includes a second elongate section 40 having proximal and distal end portions and a second inner surface 48 extending between the ends. The second elongate section is connected to the first elongate section such that the sections are substantially aligned. The distal end portion of the second elongate section defines an illuminating output member 49. The proximal end portion of the first elongate section

has an insertion area 39 for receipt of a portion of the second elongate section. As to claim 47, the insertion area 47 is formed as a U-shaped flap. The illumination input end 49 is coupled to the optical cable 27 through the twist connector. The first elongate inner surface does not have a non-linear (or bent) shape. Hipps shows a retractor having a first elongate section 30 having an inner surface 38 having a curved (bent) shape (see Figure 2B) to prevent trauma to the tissue. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the inner surface of Evans to have a curved (non-linear) shape, as taught by Hipps, in order to prevent trauma to the tissue.

Allowable Subject Matter

Claims 1-42 and 48 are allowed.

Claims 45, 46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed April 23, 2004 have been fully considered but they are not persuasive. Applicant does not include any arguments with respect to claims 43, 44 and 47.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 703-308-2701. The examiner can normally be reached on M-F 7:00am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on 703-308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9306 for After Final communications.

Application/Control Number:
10/055,778
Art Unit: 3732

Page 5

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Cary E. O'Connor
Primary Examiner
Art Unit 3732

ceo
June 20, 2004